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ROBB EVANS & ASSOCIATES LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION.

Case No. 2:18-cv-00442-JCM-PAL

Plaintiff,

V.

AWS, LLC, et al.,

STIPULATED ORDER FOR QUALIFIED TURNOVER OF RESERVE FUNDS

Defendants.

The Federal Trade Commission (the “FTC”), the Court-Appointed Receiver Robb Evans & Associates LLC (the “Receiver”), Non-Party Synovus Bank (“Synovus”), and Non-Party Qualpay, Inc. (“Qualpay,” and collectively with Synovus, the “Acquirers”) stipulate to the entry of this Stipulated Order for Qualified Turnover of Reserve Funds to facilitate the resolution of competing claims to the reserve funds referenced in Section III, paragraph C, subsection 31 of the Court’s Stipulated Order for Permanent Injunction and Monetary Judgment (the “Stipulated Order”) [Doc. No. 80].

1 THEREFORE, IT IS ORDERED as follows:

2 1. The Acquirers currently hold \$2,601,106.85 in reserve funds associated with
 3 payment card transactions initiated by cardholders doing business with Defendant FBA Stores
 4 LLC (the “Reserve Funds”). The FTC and the Receiver claim that such Reserve Funds are
 5 property of Defendant FBA Stores LLC and must be turned over to the Receiver pursuant to the
 6 Stipulated Order. The Acquirers, by contrast, claim that such Reserve Funds, as well as income
 7 therefrom, are not the property of the Defendants and that, in any event, the Acquirers are entitled
 8 to use those Reserve Funds to offset consumer-initiated chargebacks based on, *inter alia*,
 9 ownership of the Reserve Funds, their contract with Defendant FBA Stores, their security interest
 10 in the Reserve Funds, and the doctrine of recoupment.

11 2. The FTC and the Receiver have agreed to promptly negotiate with the Acquirers in
 12 good faith regarding the proper disposition of the Reserve Funds, but only after a preliminary
 13 turnover of the Reserve Funds to the Receiver. At the same time, the FTC and the Receiver have
 14 agreed that such a turnover will not operate to prejudice or limit the rights, claims, or defenses of
 15 the Acquirers *vis-à-vis* the Reserve Funds, if any.

16 3. The Court therefore ORDERS the Acquirers to turn over the Reserve Funds to the
 17 Receiver, but finds that such a turnover will not impair, and is without prejudice to or limitation
 18 on, the Acquirers’ rights, claims, and defenses with respect to the Reserve Funds, and income
 19 therefrom, whether based on ownership of the Reserve Funds, the Acquirers’ contract with
 20 Defendant FBA Stores, any security interest in the Reserve Funds (and any perfection of that
 21 security interest that exists or existed prior to the turnover), the doctrine of recoupment, or
 22 otherwise.

23 4. The Receiver shall place the Reserve Funds on deposit in a separate interest-
 24 bearing receivership account. Unless otherwise ordered by the Court, such funds shall not be
 25 available to pay the expenses of the receivership estate. In the event the Receiver shall seek any
 26 disbursement of Reserve Funds or income therefrom, the Receiver shall give the Acquirers
 27 fourteen (14) days advance notice of such request and an opportunity to object. Should any
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1 objection be filed with the Court, the Receiver shall not make such disbursement until the Court
2 resolves Acquirer(s)' objection

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4 SO ORDERED.

5 Dated: September 12, 2018.

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7 JAMES C. MAHAN
8 UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 300, Los Angeles, CA 90067. On **September 10, 2018**, I served the foregoing document(s) described as: **STIPULATED ORDER FOR QUALIFIED TURNOVER OF RESERVE FUNDS** on the interested party(ies) below, using the following means:

All parties identified for Notice of Electronic Filing generated by the Court's CM/ECF system under the referenced case caption and number

BY ELECTRONIC MAIL. I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- Edward A. Marshall, edward_marshall@agg.com
- Steven Kaufmann, SKaufmann@mofo.com
- Theresa Kananen, Theresa.Kananen@AGG.com

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **September 10, 2018** at Los Angeles, California.

/s/ Stephanie L. Moore
Stephanie L. Moore

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